

REMARKS/ARGUMENTS

Reconsideration of this application is requested. Claims 1-4 remain active in the application subsequent to entry of this Amendment.

Non-elected claims 5-10 have been canceled, this action being taken without disclaimer or prejudice to a divisional application directed to the subject matter of these claims.

In item 3 of the Official Action the examiner pointed out a typographical error in claim 1. This has been corrected in the above amendment.

Claims 1 and 4 have been examined on the merits and claims 2 and 3 withdrawn from consideration as directed to non-elected subject matter. Claims 1 and 4 stand rejected as being unpatentable over the Kretschmer et al article in view of the published PCT application of Gillis et al. For the reasons explained below as well as in the specification of this application itself, applicants submit that claims 1 and 4 are not suggested by the combination of the two applied references and that claims 1 and 4 define inventive and patentable subject matter.

Kretschmer et al in the left column, page 609, describes catalyst compositions for ethylene polymerization comprising an iminoimidazoline ligand containing Group IVB metallocene catalyst and a borate co-catalyst $B(C_6F_5)_3$ with and without TIBAO as a scavenger.

In the present invention an ethylene polymerization is claimed in the presence of vinyl norbornene (VNB) using as the catalyst composition the composition of claim 1. The composition used in the process of the present invention excludes the presence of a borate as activator.

On page 2, first full paragraph, the examiner asserts that one skilled in this art would have easily combined the teachings of the two references, thus claims 1 and 4 are deemed to be unpatentable "in the absence of any (data) showing criticality and unexpected results". In fact, such data is present in the application as filed.

In the description at page 13 Example 4 versus Comparative Experiment C clearly shows that Example 4 according to the present invention allowed ten times more VNB than a polymerization in the presence of a borate co-catalyst to obtain the same amount of branching.

Example 8 versus Comparative Experiment C shows that under similar conditions the MAO activated sample was hardly branched, while the borate activated sample was highly branched.

Simply combining the teaching of Kretschmer with the VNB from Gillis does not lead to the process of the present invention, let alone that these citations suggest that with the catalysts used in the process of the invention the use of MAO instead of a borate leads to copolymers with a very low degree of branching, and/or to the possibility to polymerize in the presence of high amounts of VNB without gelation.

The results presented in the original specification accompanied by the executed declaration signed by the inventors would have significant evidentiary weight, comparable to the weight given to an executed declaration. It is well established by the Federal Circuit that "the examiner must consider comparative data presented in the specification which is intended to illustrate the claimed invention in reaching a conclusion in regard to the obviousness of claims." *In re Margolis*, 785 F.2d 1029, 228 U.S.P.Q. 1123, 1129 (Fed. Cir. 1993).

Applicants request that claims 1 and 4 be found allowable and that claims 2 and 3 be rejoined to active consideration as they depend from an allowable claim. Reconsideration and favorable action are solicited. Should the examiner require further information, please contact the undersigned.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____


Arthur R. Crawford
Reg. No. 25,327

ARC:eaw
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100